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KNOBBE MARTENS OLSON & BEAR LLP
620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH CA 92660

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MAY 06 2002

OFFICE OF PETITIONS

In re Application of
Arviv, et al.
Application No. 09/938,216
Filed: August 24, 2001
Attorney Docket No. 1160
Title: ASYMMETRIC ADAPTIVE MODULATION
IN A WIRELESS COMMUNICATION SYSTEM

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the "Statement of Facts in Support of Filing on Behalf of Non-Signing Inventors (37 CFR 1.47)", filed February 12, 2001, which is being treated as a petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. 1.136(a).

The above-identified application was filed on August 24, 2001. On September 28, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition (and fee) and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a two month extension of time and included a Certificate of Mailing dated January 25, 2002. Accompanying the petition were: (1) a statement of facts by Ruth Stoffel, describing the efforts to obtain signatures from inventors Eli Arviv and Penny Efraim; and (2) copies of cover letters from Stoffel to Arviv and Efraim, transmitting the application.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached after diligent effort or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last

known address of the non-signing inventor. Rule 17 applicant has not met requirement (1) or (2) above.

As to requirement (1), applicant states that he was notified by Federal Express that the package to non-signing inventor Efraim could not be delivered because of an insufficient address. However, applicant has not submitted a copy of the Federal Express return slip showing that the package was undeliverable. Applicant must submit this evidence on renewed petition.

As to requirement (2), the declaration is not acceptable because it does not comply with 37 CFR 1.63(a)(3). The declaration submitted does not identify the citizenship of Efraim. Also, because the declaration fails to identify the mailing address and residence of Efraim, the declaration does not comply with 37 CFR 1.63(c)(1). On renewed petition, applicant must submit a declaration in compliance with 37 CFR 1.63.

In addition, the declaration is not acceptable because the alteration to the address of David Gazelle, while initialed, was not dated.¹

Receipt of the substitute drawings, filed with the instant petition, is acknowledged.

As applicant did not submit the required \$130 petition fee, that fee has been charged to Deposit Account No. 11-1410, as authorized.

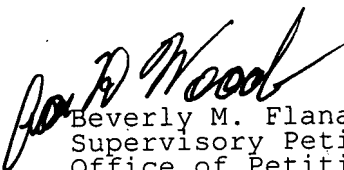
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ "Any interlineation, erasure, cancellation or other alteration of the application papers...should be dated and initialed or signed by the applicant on the same sheet of paper." 37 CFR 1.52(c)(1).